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CHARLES ELMORE

No. 463

In the Supreme Court of the United States

OCTOBER TERM, 1930

DANIEL REEVES, INC., PETITIONER

v.

CHARLES W. ANDERSON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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The United States does not oppose the petition in this case.

The question presented is whether Section 611 of the Revenue Act of 1928, c. 852, 45 Stat. 791, 875 (R. 22), should be construed to deprive the petitioner of the right which it otherwise would have had to recover taxes which had been collected after the statutory period of limitations had expired, and if so construed, whether it violates the Fifth Amendment.

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This question is the same as that involved in *Graham and Foster, Co-partners, etc.*, v. *Goodcell, Collector*, No. 36, October Term, 1930, certiorari granted, March 3, 1930; *Magee* v. *United States*, No. 65, October Term, 1930, certiorari granted, May 19, 1930; *Oak Worsted Mills* v. *United States*, No. 104, October Term, 1930, certiorari granted, June 2, 1930; and *Taft Woolen Company* v. *United States*, No. 105, October Term, 1930, certiorari granted, June 2, 1930, and several other cases now pending on petition for certiorari in which the Government has not opposed the petitions. The facts are substantially the same in the instant case as in those cases. In the instant case the suit was brought before the passage of the Revenue Act of 1928.

The pertinent dates in the instant case are as follows (R. 13-15, 16):

March 11, 1920, return for 1919 filed.

April 5, 1924, additional assessment made.

April 16, 1924, claim in abatement filed.

March 11, 1925, expiration of five-year period for assessment and collection of tax.

September 28, 1925, claim in abatement rejected.

November 14, 1925, tax collected.

April 27, 1927, claim for refund filed.

November 5, 1927, claim for refund rejected.

November 22, 1927, suit brought.

The Circuit Court of Appeals for the Second Circuit, affirming the judgment of the District

Court, held that Section 611 of the Revenue Act of 1928 barred recovery. (R. 34.)

Since the same question is already before this Court in several pending cases, the United States does not oppose the granting of the writ of certiorari.

Respectfully submitted.

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OCTOBER, 1930.